IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 55 of 2002

in

SPECIAL CIVIL APPLICATIONNo 223 of 2001

with

CIVIL APPLICATION No 995 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT
and
Hon'ble MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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KAYEL SYNTEX LTD.

Versus

BABUBHAI BALDEVBHAI PATEL C/O NORTH GUJARAT ENGG.GENERAL

Appearance:

MR ASHOK L SHAH for Appellant No.
MR NN PRAJAPATI for Respondent No. 1
NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE J.N.BHATT

and

MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 01/05/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE J.N.BHATT)

Admit. Service of notice is waived by learned advocate Mr.NN Parjapati for the respondents. Upon joint request, the matter is taken up for final hearing today itself.

It appears from the observations made in para 5 of the impugned judgment of the learned single Judge that the Court was not enlightened correctly about the existing mechanism of BIFR under the provisions of Sick Industrial Companies (Special Provisions) Act, 1985, as it was stated at the Bar that it has been abolished by the Government. The observations made in para 5 are pertinent. Therefore, they are reproduced with profit here as under:

> "5. In view of the aforesaid fact, the counsel for the respondent has also stated that now 'BIFR' has been abolished by the Government. In view of the same, however the respondent Authority can approach the new Authority, and in view of the law laid down by this Court, and also in view of the principles of Gratuity Act enacted, the respondent Authority can recover the amount of gratuity of respondent no.1 from the petitioner Company in this behalf. After obtaining the said permission the petitioner will have to pay the said amount to the respondent no.1 in this behalf. In view of the same, petition stands disposed of."

It is, jointly, therefore, rightly, submitted that the statement made by the counsel whose name or whose counsel is not identifiable, in absence of specific mention in para 5, and as there is no abolition of BIFR constituted under the provisions of Sick Industrial Companies (Special Provisions) Act, 1985, the matter requires reconsideration by the learned single Judge. We, therefore, remand the matter to the learned single Judge quashing and setting aside the impugned judgment of the learned single Judge in the writ petition to consider and determine and adjudicate upon the whole petition afresh in accordance with law and until the disposal of the petition, interim relief granted earlier shall remain operative, as there is no dispute about that aspect before us.

In the result, the Letters Patent Appeal shall stand allowed to the aforesaid extent with no order as to costs.

In view of the order passed in the main appeal, Civil Application shall also stand disposed of.

(J.N.Bhatt, J.)

(Akshay H. Mehta, J.)
(vjn)